

REMARKS/ARGUMENTS

Reconsideration and reversal of the rejections presented in the Office Action dated July 14, 2004 are respectfully requested in light of the following.

Claims 1-6 and 8-25 are solicited, wherein claims 1, 10, 17, and 22 are presented in independent form. Claim 1 has been amended to better define the present invention by incorporating the subject matter of dependent claim 7. Claim 7 has been subsequently canceled. Claim 22 has been amended to better define and further distinguish the invention from the cited art.

Paragraphs 0046 and 0049 of the specification have been amended to include the alternative language "arms" for the lower and upper support members, respectively. This is a clarifying amendment made such that the language of the specification more closely reflects the language of the claims.

In the aforementioned Office Action, the Examiner indicated that U.S. Patent No. 1,306,363 was not available due to automation difficulties. As requested, a copy of U.S. Patent No. 1,306,363 has been transmitted via facsimile for review by the Examiner. It is further noted that the Examiner did not initial that she had reviewed U.S. Patent No. 5,839,759 as listed on sheet 4 of the form PTO-1449 which accompanied the Information Disclosure Statement of January 28, 2004. It is respectfully requested that the Examiner expressly consider U.S. Patent No. 1,306,363 and U.S. Patent No. 5,839,759 during her examination of the present application and initial that each reference has been considered on the appropriate form PTO-1449.

Also submitted herewith is a Supplemental Information Disclosure Statement disclosing an additional reference for consideration by the Examiner. Again, it is respectfully requested that the Examiner consider this additional reference, and indicate such by initialling the form PTO-1449.

The Examiner has rejected claims 1, 2, 3, 5, 6, and 17-19 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,113,164 to Setina (hereinafter "Setina").

Setina discloses an auxiliary push bumper apparatus mounted on the front end of a motor vehicle 15. The push bumper apparatus includes a pair of bumper guards 16 and 18 formed by loops 20 of a metal bar. A pair of mounting brackets 24 and 26 are fastened to the loops 20 and are bolted together so that the inner bracket 26 forms a clamping device with a backing plate 28, which is clamped around the original bumper 30 of the vehicle 15. As shown in Fig. 3, outer

ends of side sections 12 and 14 of the push bumper are connected by brackets 32 and 34, respectively, to the frame 35 of the vehicle by a terminal member 36 which is bolted to the frame. The bumper guards 16 and 18 are both provided with a bottom bracket 38 which is also bolted to the frame 35 of the vehicle by a connecting plate extending beneath the original bumper 30 for giving the push bumper extra strength. In an alternate embodiment as shown in Fig. 10, lower bracket 92 provides support to the upper bracket 88 such that the lower bracket may be affixed by a connecting plate to the frame beneath the original bumper in the manner of bracket 38 of Fig. 2.

Amended independent claim 1 recites a push bumper apparatus configured to be coupled to a vehicle including a bumper, a frame assembly positioned in longitudinally spaced relation to the bumper, and a fascia positioned in longitudinally spaced relation in front of the bumper. Claim 1 now further recites that the push bumper apparatus includes a support member configured to secure one of a front clamping member and a rear clamping member to the push member and to pass through a pre-existing opening formed within the fascia, without requiring any new openings to be formed through any of the bumper, the frame assembly, and the fascia.

Setina fails to disclose the elements recited in amended claim 1. There is simply no disclosure in Setina of a support member configured to pass through a pre-existing opening formed within the fascia, without requiring new openings to be formed through any of the bumper, the frame assembly, and the fascia. As acknowledged by the Examiner, "Setina does not specifically disclose that the support member (24) is configured to pass through a pre-existing opening formed within the fascia." (Office Action, pg. 6, lines 20-21). However, the Examiner summarily concludes that Setina discloses a fascia with pre-existing apertures, and it would therefore have been obvious to one of ordinary skill in the art at the time of the invention to pass the support member through the pre-existing apertures in the fascia.

When combining the content of various references, "there must be some teaching, suggestion or motivation in the prior art to make the specific combination that was made by the applicant." In re Dance, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); In re Raynes, 28 USPQ2d 1630, 1631 (Fed. Cir. 1993); In re Oetiker, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Accord, In re Fritch, 23 USPQ2d 1780 (Fed. Cir. 1992).

A proper analysis further requires considering "whether the prior art would also have revealed that in [making the claimed invention], those of ordinary skill in the art would have a reasonable expectation of success." In re Vaeck, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). "Obviousness can not be established by hindsight combination to produce the claimed invention." In re Dance, 48 USPQ2d at 1637; In re Gorman, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). "Determination of obviousness can not be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention. There must be a teaching or suggestion within the prior art, or within the general knowledge of a person of ordinary skill in the field of the invention, to look to particular sources of information, to select particular elements, and to combine them in the way they were combined by the inventor." ATD Corp. v. Lydall Inc., 48 USPQ2d 1321, 1329 (Fed. Cir. 1998).

Finally, "both the suggestion and the reasonable expectation of success must be founded in the prior art, and not in the applicant's disclosure." In re Vaeck, 20 USPQ2d at 1442. "[I]t is the prior art itself, and not the applicant's achievement, that must establish the obviousness of the combination." In re Dance, 48 USPQ2d at 1637; Interconnect Planning Corp. v. Feil, 227 USPQ 543, 551 (Fed. Cir. 1985).

"Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight." In re Dembiczak, 50 USPQ2d at 1617; Feil, 227 USPQ at 547 (Fed. Cir. 1985). The prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 220 USPQ 303 (Fed. Cir. 1983); M.P.E.P. § 2141.02.

The Examiner has failed to satisfy the Patent and Trademark Office burden of establishing obviousness. The Examiner has failed to show any objective teaching that would suggest modifying Setina to arrive at the claimed invention. More particularly, there is no hint or suggestion in Setina of a support member configured to pass through a pre-existing opening formed within the fascia.

Further, both embodiment push bumpers disclosed in Setina apparently require that new openings be formed within the frame of the vehicle. As noted above, the push bumper illustrated in Fig. 2 requires brackets 32 and 34 to be connected to the frame 35 of the vehicle by a terminal member 36 which is bolted to the frame 35. The bumper guards 16 and 18 are also both

provided with a bottom bracket 38 which is bolted to the frame 35 of the vehicle by a connecting plate. Similarly, the embodiment illustrated in Fig. 10 includes a lower bracket 92 giving support to the upper bracket 88 such that the lower bracket may be fixed by a connecting plate to the frame beneath the original bumper in the manner of bracket 38 of Fig. 2.

As such, there is simply no disclosure, much less any teaching or suggestion, in Setina of providing a support member configured to pass through a pre-existing opening formed within the fascia. Furthermore, there is no teaching or suggestion in Setina of providing such a support member for securing one of the front clamping member and the rear clamping member to the push member without requiring new openings to be formed through any of the bumper, the frame assembly, and the fascia.

For at least the foregoing reasons, it is respectfully submitted that claim 1, and the claims dependent therefrom, are in condition for allowance.

Claim 17 recites a push bumper apparatus configured to be coupled to a frame assembly of a vehicle, the vehicle including a bumper positioned in longitudinally spaced relation to the frame assembly, and a fascia positioned in longitudinally spaced relation in front of the bumper. The push bumper apparatus recited in claim 17 includes a first clamping member including a first clamping surface configured to face a first frame surface of the frame assembly, and a second clamping member including a second clamping surface configured to face a second frame surface of the frame assembly. Claim 17 further recites a fastener connecting the first clamping member to the second clamping member such that the frame assembly is clamped between the first clamping surface and the second clamping surface.

Claim 17 clearly requires, and Setina fails to disclose, that the first and second clamping members include first and second clamping surfaces configured to clamp to the frame assembly wherein the frame assembly is positioned in longitudinally spaced relation to the vehicle bumper. Setina provides mounting brackets 24 and 26 which are fastened together so that the inner bracket 26 forms a clamping device with a backing plate 28 which is clamped around "the original bumper 30 of the vehicle." Setina provides no disclosure of a structure configured to clamp to the frame assembly of a vehicle as opposed to the original bumper thereof.

In short, the Examiner has simply failed to establish a *prima facia* case of anticipation under 35 U.S.C. § 102(b). As such, it is respectfully submitted that claim 17, and the claims dependent therefrom, are properly allowable over Setina.

Claims 8, 10-15, and 22-25 have been rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Setina in view of a Ford Crown Victoria.

Independent claim 10 recites a push bumper apparatus configured to be coupled to a frame assembly of a vehicle, the vehicle including a bumper positioned in longitudinally spaced relation to the frame assembly, and a fascia positioned in longitudinally spaced relation in front of the bumper. The push bumper apparatus as recited in claim 10 includes a coupler configured to be supported by the frame assembly, and a lower support member configured to secure the coupler to the push member and extending vertically below the bumper from the coupler to the push member. Claim 10 further recites an upper support member configured to secure the coupler to the push member and extending vertically above the bumper from the coupler to the push member.

Setina fails to provide any hint or suggestion of the elements clearly recited in claim 10. More particularly, there is no teaching or suggestion in Setina of providing a coupler configured to be supported by a frame assembly of a vehicle in combination with a lower support member and an upper support member. Moreover, Setina fails to teach or suggest a lower support member configured to secure the coupler to the push member and extend vertically below the bumper from the coupler to the push member, and an upper support member configured to secure the coupler to the push member and extend vertically above the bumper from the coupler to the push member.

Further, even if the references relied upon by the Examiner were combined as suggested, one of ordinary skill in the art would not arrive at the invention as recited in claim 10. More particularly, neither of the references disclose all of the elements recited in claim 10. For example, neither reference discloses an upper support member configured to secure the coupler to the push member and extending vertically above the bumper. Given the absence of this element in either reference relied upon by the Examiner, applicants fail to see how a combination of these references would teach or suggest the invention recited in claim 10. The references relied upon by the Examiner simply do not teach or suggest all of the claim limitations recited in claim 10.

In support of her position, the Examiner summarily concludes that "it would have been obvious to one of ordinary skill in the art at the time of the invention to place the clamping members around a cross-frame member of the frame assembly and to allow an additional bumper

member to be placed between the cross-frame member and the fascia as taught by a 2003 Ford Crown Victoria." The Examiner is apparently engaging in an improper hindsight analysis and has failed to satisfy the Patent and Trademark Office burden of establishing obviousness. The Examiner fails to show any objective teaching that would suggest modifying Setina in the manner suggested.

Independent claim 22 recites a push bumper apparatus configured to be coupled to a frame assembly of the vehicle, the vehicle including a bumper positioned in longitudinally spaced relation to the frame assembly, and a fascia positioned in longitudinally spaced relation in front of the bumper. Claim 22 now further recites that the push bumper apparatus includes first and second push members, and a coupler configured to couple the first and second push members to the vehicle frame assembly, wherein the first push member and the second push member are not coupled to the bumper of the vehicle.

It is respectfully submitted that claim 22, and the claims dependent therefrom, are in proper condition for allowance. More particularly, there is no teaching or suggestion in Setina or a 2003 Ford Crown Victoria of providing a coupler which is configured to couple first and second push members to a vehicle frame assembly, without coupling the push members to the bumper of the vehicle. Setina clearly discloses mounting brackets 24 and 26 for clamping around the original bumper 30 of the vehicle. Absent impermissible hindsight analysis, one of ordinary skill in the art would not be motivated to modify the Setina reference to arrive at the present invention as recited in independent claim 22.

For at least this reason, it is respectfully submitted that claim 22, and the claims dependent therefrom, are in proper condition for allowance.

In reviewing the Examiner's thoughtful comments as presented in the aforementioned Office Action, it is noted that claims 9, 16, and 21 have not been expressly rejected. As such, it is respectfully submitted that these claims are further allowable.

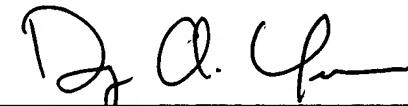
In view of the foregoing, it is respectfully submitted that all of the solicited claims are in condition for allowance. Such action is respectfully requested.

The Examiner's kind attention is directed to the Petition for Extension of Time filed concurrently herewith. If necessary, applicants request that this response be considered a request for an extension of time appropriate for the response to be timely filed. Applicants request that

any required fees needed beyond those submitted with this amendment be charged to the account of Baker & Daniels, Deposit Account No. 02-0390.

The Examiner is invited to contact the undersigned at the telephone number provided below should any question or comment arise during reconsideration of this matter.

Respectfully submitted,



Douglas A. Yerkeson, Reg. No. 39,882

Baker & Daniels

300 North Meridian Street, Suite 2700

Douglas A. Yerkeson, Reg. No. 39,882

Baker & Daniels

300 North Meridian Street, Suite 2700

Indianapolis, Indiana 46204

Telephone: (317) 237-0300

Facsimile: (317) 237-1000

e-mail: Doug.Yerkeson@bakerd.com